THE

ARGUMENT LIST

OF

THE LAW ACADEMY

OF PHILADELPHIA.

SESSION OF 1875—6.

PHILADELPHIA:
PUBLISHED FOR THE LAW ACADEMY ONLY, BY
KAY & BROTHER, 17 AND 19 SOUTH SIXTH STREET.
1875.

14

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PHILADELPHIA:
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RICHARD C. DALE, JR.

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JOHN SCOLLAY,
ROBERT N. NEILSON,
WILLIAM DRAYTON,
FRANCIS J. ALISON.

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J. RODMAN PAUL, JR.

SECRETARY,
HOOD GILPIN.

RECORDER,
JOSEPH A. SINN.

ASSISTANT SECRETARY,
JAMES S. FENTON, JR.

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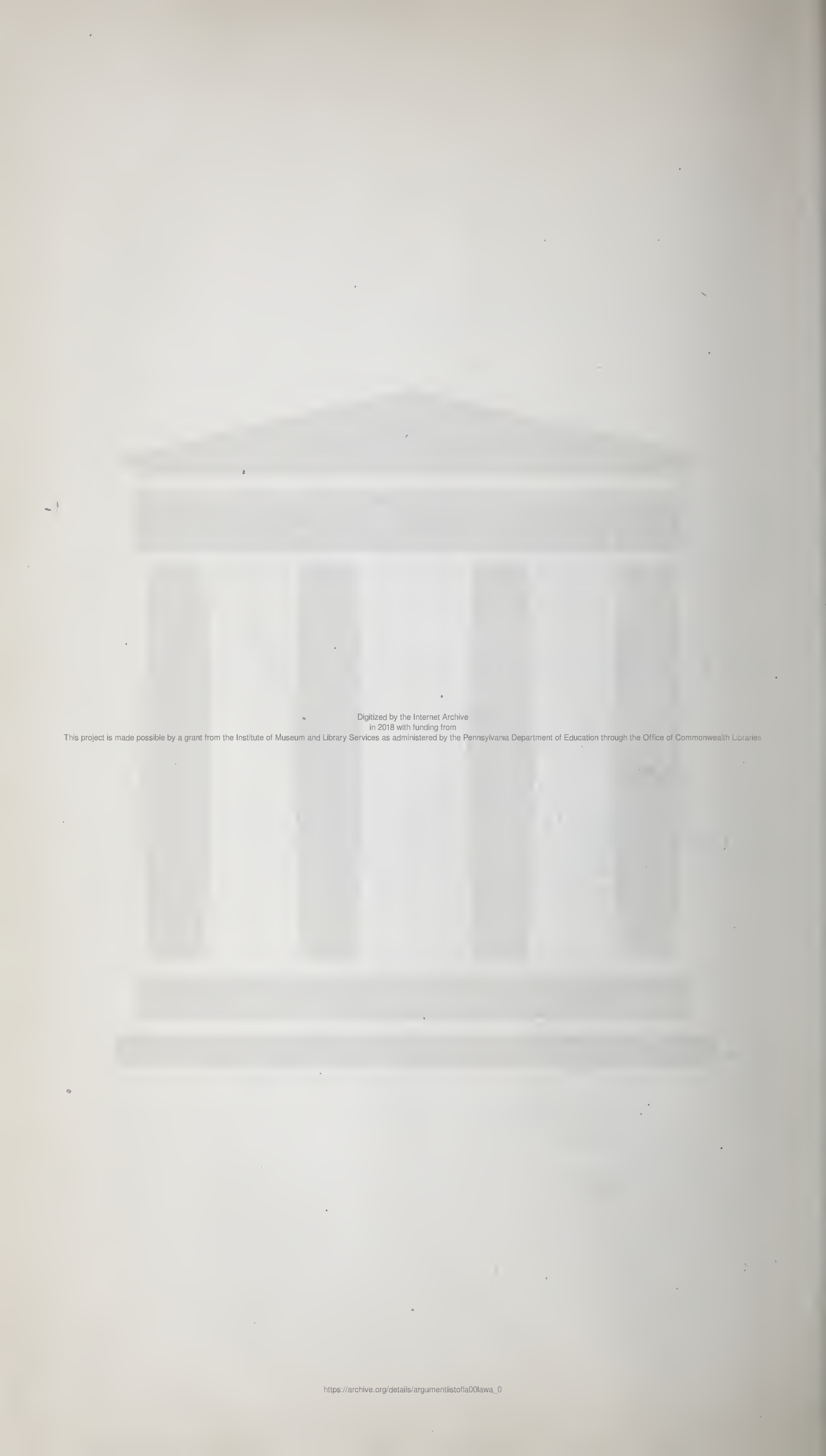
[1] For the session of 1874–75.

[2] For the session of 1875–76.



ACTIVE MEMBERS AND THEIR ADDRESSES.

Abbett, Edwin L.....426 Walnut Street.
Adams, Josiah R.....430 Walnut Street.
Adams, Robert, Jr.....210 South Fourth Street.
Addicks, William H.....210 West Washington Square.
Alcorn, James.....812 Walnut Street.
Alison, F. J.....416 Walnut Street.
Allinson, E. P.....210 South Fourth Street.
Allison, Wm. H.....631 Walnut Street.
Baird, R. Loper.....735 Walnut Street.
Beck, H. D.....225 South Sixth Street.
Beitler, A. M.....623 Walnut Street.
Benson, Louis F.....532 Walnut Street.
Beveridge, Andrew M.....706 Walnut Street.
Biddle, W. L. C.....131 South Fifth Street.
Bispham, George Tucker.....710 Walnut Street.
Bleight, George C.....23 North Seventh Street.
Bley, John M.....522 Walnut Street.
Blight, George, Jr.....729 Walnut Street.
Boyd, Peter.....40 North Sixteenth Street.
Boyle, J. P.....518 Walnut Street.
Brewster, F. Carroll, Jr.....214 West Washington Square.
Brightly, F. F.....420 Library Street.
Brock, John William.....416 Walnut Street.
Brodhead, R.....210 South Fourth Street.
Brown, Henry Armitt.....204 West Washington Square.
Budd, Henry, Jr.....416 Walnut Street.
Burnett, William H.....627 Walnut Street.
Buzby, D. L.....532 Walnut Street.
Cadwalader, John, Jr.....252 South Fourth Street.
Campbell, J. C.....611 Vine Street.
Cantrell, Francis S.....528 Walnut Street.
Carr, George B.....210 South Seventh Street.
Carr, W. W.....210 South Seventh Street.
Carson, Hampton L., Jr.....32 South Third Street.
Carter, Williams.....416 Walnut Street.

Carver, C.....707 Walnut Street.
Carver, J. H.....707 Walnut Street.
Castle, Horace.....709 Locust Street.
Chamberlane, J. E. M., Jr.....329 Chestnut Street.
Clapp, B. F.....214 West Washington Square.
Clay, Richard W.....522 Walnut Street.
Collins, William B.....117 South Seventh Street.
Connellan, John H.....210 South Fourth Street.
Connolly, E.....514 Walnut Street.
Connolly, M. Daniel.....108 South Fourth Street.
Conrade, G. T.....244 South Third Street.
Constable, Stevenson.....1820 Delancey Place.
Cooper, J. C.....520 Walnut Street.
Cooper, W. B.....517 Locust Street.
Cox, Albert W.....707 Walnut Street.
Cox, Jesse, Jr.....Chicago.
Craige, W. C.....226 South Fourth Street.
Cuyler, T. De Witt.....704 Walnut Street.
Cutler, Alexander R.....213 South Sixth Street.
Crawford, A. C.....518 Walnut Street.
Dale, R. C., Jr.....216 South Fourth Street.
Darrach, H.....311 North Sixth Street.
Dixon, Alexander J. Dallas.....416 Walnut Street.
Dorr, B. Dalton.....627 Walnut Street.
Dougherty, D. W.....717 Walnut Street.
Dougherty, W. F.....710 Walnut Street.
Douglass, A. P.....532 Walnut Street.
Douglas, Geo. L.....
Drayton, W.....704 Walnut Street.
Dubois, H. D.....158 North Ninth Street.
Durar, W. M.....214 West Washington Square.
Edwards, Richard S.....524 Walnut Street.
Elsasser, Paul M.....217 South Third Street.
Emlen, George.....512 Walnut Street.
Esler, F. B.....220 W. Washington Square.
Esling, Charles H. A.....208 South Fourth Street.
Eyre, Charles.....217 South Third Street.
Fallon, F. C.....208 South Fifth Street.
Faunce, B. F.....125½ South Fourth Street.
Fell, D. Newlin.....22 North Seventh Street.
Fenton, J. S., Jr.....208 South Fifth Street.
Ferriere, James L.....
Fisher, George Harrison.....735 Walnut Street.
Fisher, James L.....224 South Fourth Street.
Fox, J. M.....208 South Fifth Street.
Fox, Samuel G.....140 South Fourth Street.

Freedley, Angelo T.....710 Walnut Street.
Gangewer, Allen H.....426 Walnut Street.
Garner, C. N.....
Gendell, J. Howard.....631 Walnut Street.
Gibb, J. McGregor.....131 South Fifth Street.
Gibbons, C. J.....242 South Third Street.
Gilpin, Hood.....615 Walnut Street.
Goodwin, Harold.....631 Walnut Street.
Gordon, J. G.....221 South Sixth Street.
Graham, George S.....130 South Sixth Street.
Graham, George T.....Chicago.
Gregory, H. S.....512 Walnut Street.
Gregory, W. M.....1035 Beach Street.
Grier, J. Rich.....420 Library Street.
Gross, A. Haller.....727 Walnut Street.
Gross, Joseph P.....32 South Third Street.
Guibert, A. B.....208 South Fifth Street.
Gummere, F. B.....210 South Fourth Street.
Haldorn, George A.....615 Walnut Street.
Hall, W. Coleman.....112 South Fourth Street.
Hamersley, E. G.....708 Walnut Street.
Hanson, E. Hunn.....717 Walnut Street.
Hanson, Joseph.....501 Chestnut Street.
Harmer, James L.....708 Walnut Street.
Harris, Albert H.....625 Walnut Street.
Harris, H. G.....625 Walnut Street.
Haverstick, Horace.....522 Walnut Street.
Hays, James E.....Camden, N. J.
Hazlehurst, Henry.....508 Walnut Street.
Hepburn, Henry F.....619 Walnut Street.
Hinckle, Charles F.....210 West Washington Square.
Hinckley, Robert H.....532 Walnut Street.
Hoffman, Edward F.....627 Walnut Street.
Hopkinson, E.....224 South Fourth Street.
Hopple, William.....221 South Fifth Street.
Horner, C. F .....4039 Chestnut Street.
Horner, Inman.....623 Walnut Street.
Howell, C. H.....708 Walnut Street.
Hunsicker, J. G.....1112 Walnut Street.
Hunt, William M., Jr.....208 South Fifth Street.
Jackson, Warner.....131 South Fourth Street.
James, A., Jr.....251 South Fourth Street.
Jefferson, George R.....138 South Sixth Street.
Jones, J. L.....285 South Fourth Street.
Judge, Thomas.....129 South Fifth Street.
Junkin, Joseph De F.....523 Walnut Street.

Katz, Charles W.....242 South Third Street.
Kratz, C. J.....214 West Washington Square.
Kay, J. Alfred.....19 South Sixth Street.
Keene, George Frederick.....419 Walnut Street.
Kendall, Otis H.....627 Walnut Street.
Keith, Charles P.....S. E. cor. Sixth and Locust Streets.
Kingston, Harry T.....627 Walnut Street.
Lane, William B.....123 South Fourth Street.
Lansdale, W. Moylan.....709 Walnut Street.
Leach, J. Granville.....733 Walnut Street.
Leaming, J. S.....214 West Washington Square.
Lee, A., Jr.....518 Walnut Street.
Leedom, J.....130 South Sixth Street.
Lennig, Thompson.....731 Walnut Street.
Lewis, Francis D.....623 Walnut Street.
Lind, J. H.....204 West Washington Square.
Littleton, William E.....514 Walnut Street.
Lockwood, C. L.....Ledger Building.
Love, W. E.....214 West Washington Square.
Lowry, Benjamin H.....423 Walnut Street.
Lynd, J. F.....225 South Sixth Street.
Magee, Horace.....224 South Fourth Street.
Massey, L. C.....208 South Fifth Street.
Maxwell, R. D.....633 Walnut Street.
Mayer, A.....36 South Seventh Street.
McClees, H. L.....522 Walnut Street.
McCormick, T. B.....523 Pine Street.
McGeoghegan, John V.....242 South Fifth Street.
McGeorge, William, Jr.....32 South Third Street.
McHugh, Charles P. H.....715 Walnut Street.
McKeehan, J. H.....225 South Sixth Street.
McKinley, J. S.....140 South Sixth Street.
McMichael, Charles B.....109 South Third Street.
Meany, D. B.....514 Walnut Street.
Miller, Marcellus.....158 North Ninth Street.
Miller, N. Dubois.....329 Chestnut Street.
Mitchell, Thomas.....723 Walnut Street.
Monaghan, Felix A.....104 South Sixth Street.
Monaghan, R. Jones.....51 North High Street, West Chester.
Moore, Thomas C.....207 South Ninth Street.
Morgan, Charles E., Jr.....623 Walnut Street.
Morgan, C. R.....130 South Sixth Street.
Morgan, Randall.....623 Walnut Street.
Morris, Charles E.....715 Walnut Street.
Morris, J. Tyson.....404 Locust Street.
Muirheid, H. P.....205 South Sixth Street.

Myers, D. J., Jr.....206 West Washington Square.
Neff, Rudolph L.....707 Walnut Street.
Neilson, Robert H.....215 South Fifth Street.
Neilson, William D.....215 South Fifth Street.
Newlin, Harold P.....424 Library Street.
Newlin, J. W. M.....514 Walnut Street.
Nicholson, F.....1112 Walnut Street.
Nicholson, W. R.....623 Walnut Street.
Norris, G. Heide.....631 Walnut Street.
Norris, J. Parker.....204 West Washington Square.
O'Brien, W. H.....
O'Kie, F. B.....518 Walnut Street.
O'Neill, Thomas Warren.....142 South Sixth Street.
Olmsted, H. C.....215 South Fifth Street.
Outerbridge, Albert A.....707 Walnut Street.
Osbourne, F. A.....528 Walnut Street.
Page, Emanuel J.....706 Walnut Street.
Parrish, Joseph.....323 Walnut Street.
Parrish, Samuel L.....528 Locust Street.
Patterson, T. C. .....623 Walnut Street.
Paul, J. R., Jr.....707 Walnut Street.
Peterman, W. H.....532 Walnut Street.
Peterson, A. E.....627 Walnut Street.
Phillips, Alfred I.....518 Walnut Street.
Pleasants, Henry, Jr.....210 South Fourth Street.
Pratt, J. T.....114 South Sixth Street.
Prichard, Frank P.....504 Walnut Street.
Prosser, F. B.....514 Walnut Street.
Pyle, R. L.....627 Walnut Street.
Rawle, Francis.....230 South Fourth Street.
Redding, W. A.....S. E. cor. Sixth and Locust Street.
Reed, Henry.....627 Walnut Street.
Reed, George W.....146 South Fourth Street.
Rex, Walter E.....524 Walnut Street.
Rey, Emanuel.....40 North Sixteenth Street.
Richardson, C. B. D.....115 South 7th Street.
Robins, William B.....729 Walnut Street.
Robinson, J. B.....708 Walnut Street.
Rodman, Walter C.....419 Locust Street.
Rothermel, P. Frederick.....37 South Third Street.
Rush, Murray.....224 South Fourth Street.
Satterthwaite, Benjamin C.....242 South Fifth Street.
Savage, Charles C.....224 South Fourth Street.
Savage, W. L.....226 South Fourth Street.
Schively, C. F.....
Sayres, Edward S., Jr.....217 South Third Street.

Schmitt, Max.....32 South Third Street.
Scollay, J.....424 Library Street.
Selden, Arthur C.....518 Walnut Street.
Sharswood, George, Jr.....210 South Fourth Street.
Simpers, R. H.....131 South Fifth Street.
Sinn, Joseph A.....Ledger Building.
Smith, Claude L.....627 Walnut Street.
Smith, C. Morton.....224 South Fourth Street.
Smith, Henry Cavalier.....208 South Fifth Street.
Smith, Henry G.....138 South Third Street.
Souwers, Geo. F.....623 Walnut Street.
Spiese, George W.....204 South Fifth Street.
Sproat, W. S.....633 Walnut Street.
Stein, C. C. .....524 Walnut Street.
Stork, T. B.....215 South Fifth Street.
Sutherland, T. A. .....1607 Chestnut Street.
Swartz, A. S. .....430 Library Street.
Swayne, Charles .....208 West Washington Square.
Tatham, G. N. .....1114 Spruce Street.
Taylor, C. B.....704 Walnut Street.
Taylor, Charles T.....532 Walnut Street.
Taylor, J. B.....S. W. cor. Ninth and Chestnut.
Thackara, Alexander.....224 South Third Street.
Tilton, Curtis.....129 South Fifth Street.
Tindel, Adam.....717 Walnut Street.
Toner, John J.....706 Walnut Street.
Toomey, J. A.....S. E. cor. Sixth and Locust Streets.
Townsend, Charles H.....208 South Fifth Street.
Uhle, J. B.....530 Locust Street.
Vogel, Frederick B.....206 West Washington Square.
Wagner, B. Franklin.....26 South Third Street.
Wagner, Samuel, Jr.....627 Walnut Street.
Wallace, J. M. Power.....132 South Sixth Street.
Ward, Henry Galbraith.....1112 Walnut Street.
Watson, E. B.....225 South Sixth Street.
Watson, T. S.....2 Ledger Building.
Washington, W. Herbert.....704 Walnut Street.
Weeks, Horace F.....518 Walnut Street.
Wells, Charles W.....Pottsville, Pa.
West, William Nelson.....623 Walnut Street.
Wetherill, C., Jr.....1529 Locust Street.
White, Richard P.....Ledger Building.
Whitehall, L. W.....627 Walnut Street.
Wilbur, Horace P.....Ledger Building.
Wilkinson, John J.....208 South Fifth Street.
Williams, Ellis D.....323 Walnut Street.

Williams, John Q.....727 Walnut Street.
Williams, S. W.....704 Walnut Street.
Williamson, W. von A.....224 South Fourth Street.
Wilson, E., Jr.....1112 Walnut Street.
Winship, Richard C.....532 Walnut Street.
Wireman, Henry D.....705 Walnut Street.
Wolf, Otto.....129 South Fifth Street.
Wood, R. F.....1023 Spruce Street.
Zane, C.....204 South Fifth Street.

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Elected during Session of 1874–75.

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Hon. James T. Mitchell . . .	430 *Walnut Street.*
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Richard C. McMurtrie, Esq. .	416 *Walnut Street.*
George Junkin, Esq.	532 *Walnut Street.*
Clement B. Penrose, Esq. . .	631 *Walnut Street.*

DATES OF DUTIES OF THE FACULTY.

NAMES OF FACULTY.	*1875.*				*1876.*					
	Sep.	*Oct.*	*Nov.*	*Dec.*	*Jan.*	*Feb.*	*Mar.*	*Apr.*	*May*	*June*
SHARSWOOD	1	...	...	...	5	2	22	...	...	7
HARE	...	20	...	8	...	9	...	5	3	...
THAYER	8	27	...	15	...	16	...	12	...	...
MITCHELL	15	...	3	29	...	...	1	26	31	...
McMURTRIE	22	...	10	...	26	23	...	19	...	...
MILLER	29	...	17	22	...	...	8	...	10	...
JUNKIN	..	6	24	...	12	...	15	...	17	...
PENROSE	...	13	...	1	19	...	29	...	24	...

DATES OF DUTIES OF COUNSEL.

NAMES OF COUNSEL.	*Sept.*	*Oct.*	*Nov.*	*Dec.*	*Jan.*	*Feb.*	*Mar.*	*Apr.*	*May.*	*June.*
Adams, J. R.	1	..	..	..	5	..	..	..	..	..
Alcorn	1	..	..	..	5	..	..	..	..	..
Alison, F. J.	22	..	..	8	..	..	..	5	..	..
Allison, W. H.	..	6	..	..	12	..	..	..	..	..
Baird	..	..	..	8	..	..	..	..	3	..
Beitler	..	..	3	..	..	2	..	..	10	..
Bleight	..	..	..	1	..	..	..	12	..	..
Boyd	..	..	..	..	19	..	15	..	..	..
Boyle	15	..	3	..	..	..	1	..	17	..
Brock	..	..	3	..	26	..	..	..	10	..
Carr	..	..	10	..	5	..	..	26	..	..
Carson	..	6	..	..	5	..	1	..	31	..
Carter	..	..	17	..	19	..	8	..	..	..
Castle	1	..	24	..	19	..	29	..	..	..
Clay	..	..	..	..	..	..	..	5	..	..
Cooper, W. B.	..	6	..	..	..	9	..	..	..	..
Cox, A. W.	1	..	..	1	..	..	..	..	..	..
Crawford	1	..	..	8	..	..	..	12	..	..
Cuyler	..	27	..	..	..	..	22	..	..	..
Dale	..	13	..	8	..	..	..	5	17	..
Darrach	8	..	..	8	..	..	29	..	..	..
Drayton	..	13	..	22	..	..	1	..	17	..
Dougherty, D. W.	..	6	..	..	5	..	1	..	..	..
Esling	..	20	..	..	5	..	..	..	..	..
Fallon	..	20	..	8	..	9	..	..	17	..
Fenton	..	..	10	..	..	..	..	5	..	7
Freedley	..	..	..	..	..	..	1	..	..	..
Goodwin	..	13	..	1	..	..	1	..	..	..
Gordon	8	..	..	1	..	9	..	..	..	..
Gregory, H. S.	15	..	..	1	..	..	..	..	..	..
Gregory, W. M.	8	..	..	..	19	..	29	..	..	..
Gross, J. P.	..	..	..	..	19	..	29	..	..	7
Guilbert	8	..	10	..	12	..	..	..	24	..
Hamersly	15	..	..	..	..	9	..	..	..	..
Harris, H. G.	8	..	..	..	19	..	29	26	..	..
Hoffman	..	6	..	15	..	..	22	..	10	..
Howell	..	13	..	..	..	..	..	5	..	..
Jones	15	..	10	..	12	..	..	12	..	..
Junkin	15	..	..	15	..	16	..	..	..	..
Lane	..	..	3	..	12	..	22	..	3	..
Leaming	..	..	10	..	26	..	..	..	..	..
Lee	1	..	3	22	..	..	..	12	..	..
Lockwood	22	..	..	..	..	23	29	..	..	..
Love	22	..	3	..	12	..	..	..	17	..
McClees	..	..	..	..	..	..	..	5	..	..
McCormick	..	27	..	..	12	..	..	..	..	..
Mayer	22	..	24	..	26	..	..	..	31	..
Miller, N. D.	..	13	..	22	..	..	15	..	10	..
Monaghan, R. J.	..	13	..	..	26	..	22	..	..	7
Morgan, R.	22	..	10	..	..	..	15	..	3	..
Neff	..	27	..	..	..	2	..	..	..	..
Neilson, R. N.	22	..	..	15	..	9	..	..	31	..
Norris, G. H.	..	..	..	..	26	..	..	12	..	..
O'Kie	..	6	..	15	..	..	..	12	..	..
Page	..	..	..	15	..	2	..	..	..	7
Paul	29	..	17	..	..	16	..	..	17	..
Peterman	29	..	..	15	..	16	..	..	3	..
Peterson	..	20	..	22	..	23	..	..	..	..
Phillips	..	27	..	29	..	..	..	19	..	..
Pleasants	..	20	..	29	..	23	..	19	..	..
Prichard	29	..	17	..	..	23	..	..	10	..
Prosser	..	27	..	22	..	..	..	26	..	..
Redding	29	..	24	..	26	..	..	26	..	..
Rex	..	20	24	..	..	16	..	19	..	..
Robinson	15	..	..	..	..	9	..	..	..	..
Rodman	29	..	..	1	..	..	..	..	3	..
Rush	..	..	17	..	..	2	..	19	3	..
Savage, C. C.	..	..	..	..	..	2	..	26	..	..
Scollay	29	..	..	22	..	..	8	..	31	..
Selden	..	..	..	..	..	..	..	..	..	..
Smith, H. C.	..	27	..	..	..	..	22	..	..	..
Smith, C. L.	..	20	..	29	..	..	8	..	..	..
Stein	..	..	17	..	..	16	22	..	..	7
Swartz	..	..	17	29	..	2	..	..	10	..
Taylor, C. B.	..	..	24	..	..	16	..	..	..	7
Taylor, J. B.	..	..	..	29	..	23	..	..	24	..
Townsend	..	..	24	..	..	..	..	..	24	..
Uhle	..	..	..	..	..	23	..	..	31	..
Washington	..	..	..	..	..	..	8	..	24	..
Watson, T. S.	..	..	..	29	..	..	15	..	..	..
Wetherill	..	..	..	..	..	..	8	19	24	..
Weeks	..	..	..	..	..	..	8	..	..	..
Wilkinson	8	..	..	..	..	..	15	19	24	..
Williams, S. W.	..	..	..	..	..	..	15	26	31	..

ARGUMENT LIST.

Before the Provost.

September 1, 1875.

In the matter of the distribution of the proceeds of the sheriff's sale of the real estate of Henry Jones.

Common Pleas.

Exceptions to Auditor's Report.

On March 24th, 1872, Henry Jones, being insolvent, executed a mortgage of his real estate to one Caleb Smith, nominally for the consideration of $10,000, but actually for no consideration whatever, which mortgage was duly recorded. On April 5th, 1872, Charles Cushing recovered a judgment against Jones in the District Court to the amount of $15,000. On September 30th, 1872, Smith sold the mortgage for $6000 to Samuel Clark, who procured a certificate of no set-off from Jones, and who had no notice of any facts invalidating the mortgage. In March, 1874, the property was sold for $8000, under a *levari facias*, in a suit brought on the above mortgage, and the money paid into court. Cushing appeared before the auditor appointed by the Court to distribute the proceeds of sale, and claimed the fund, under his judgment. The auditor awarded the entire fund to Clark.

To this award Cushing excepts on the grounds—

1. That the mortgage was no lien in the hands of Smith, and as the judgment was entered before the assignment to Clark, the lien of the judgment had priority over that of the mortgage.

2. That at all events Clark, as against Cushing, could re-

cover only the $6000, which he had actually paid for the mortgage.

Adams, *Lee*, *Alcorn*, } For exceptions. *Cox*, *Crawford*, *Castle*, } Contra.

Mullison's Estate, 18 P. F. Smith, 215.

Before Vice-Provost Thayer.

September 8, 1875.

Wendell's Estate. { Orphans' Court. Sur Exceptions to Auditor's Report.

Jacob Wendell died in October, 1873, leaving two minor children, George, and Susan, married in 1872 to Samuel Williams. The decedent was seized of a tract of land, which, the heirs refusing to accept it at its valuation, was sold, after proceedings in partition, by order of the Orphans' Court on April 1, 1874, for $10,000. On May 1, 1874, Susan Williams died, leaving one son, Thomas. The administrator of Wendell filed his account September 1, 1874, and an auditor was appointed to settle it and make distribution of the balance.

The above facts were found by the auditor. As to $5000, Susan Williams's share of the purchase-money of the land, he reported that "it should be paid to Samuel Williams, upon his giving a bond, with surety to be approved by the Court, that the said amount shall be paid at his death to his son Thomas, or his legal representatives."

Samuel Williams excepted to this report, claiming that the 48th section of Act of 29 March, 1832, was, in effect, repealed by the Act of 11 April, 1848; and that as husband of Susan he was entitled to one-half the fund absolutely and the other half as guardian of Thomas.

Darrach, *Guilbert*, *Gordon*, } For exception. *W. M. Gregory*, *Wilkinson*, *Harris*, } Contra.

Kann's Estate, 19 P. F. Smith, 219.

Before Vice-Provost Mitchell.

September 15, 1875.

Kirkpatrick v. *Barton.*	Supreme Court. Error to District Court, Alleghany County.

Ejectment. Plea, not guilty.

The following facts were proved: John Mellon, by indenture, conveyed certain real estate to Samuel Barton, "in trust, that the said Samuel Barton, his heirs and assigns, shall and will from time to time let and demise the said premises, and recover and receive the rent and income thereof, and pay over the same as received, into the hands of my daughter Jane, wife of William Kirkpatrick, or to such person as she may by writing direct, or at her option permit her, the said Jane Kirkpatrick, to rent or demise, occupy and enjoy, the said premises, receive and take the income thereof for her own separate use and support, so as the same shall not be liable to the debts, control, or engagements of her present or any future husband; and with the written assent of said Jane Kirkpatrick to sell the said premises, or any part thereof, in fee simple or otherwise, and make a deed thereof, and give receipts for the purchase-money to the purchaser, and to pay over the same to the said Jane Kirkpatrick." Jane Kirkpatrick died in 1873, leaving two children and her husband, whereupon Barton brought an action of ejectment against Kirkpatrick. The jury found for plaintiff, with question reserved, "Whether Kirkpatrick was entitled to possession as tenant by the curtesy under the deed of trust."

The D. C. entered judgment for the plaintiff on point reserved, which is assigned for error.

H. S. Gregory, *Junkin*, *Boyle*,	For Plaintiff in Error.	*Hamersly*, *Robinson*, *Jones*,	For Defendant in Error.

Freyvogle *v.* Hughes, 6 P. F. Smith, 228.

Before Vice-Provost McMurtrie.

September 22, 1875.

The Keystone Warehouse Co.
v.
The Continental Bank.

Supreme Court.

Error to Common Pleas.

Assumpsit.

This was an action brought by the Continental Bank against the Keystone Warehouse Co., for one hundred bales of cotton. The defendant pleaded "*non cepit*" and "property in defendant."

Upon the trial, the plaintiffs showed that on July 1st, 1874, they purchased from Thomas Pierson, of Mobile, a draft for $10,000, drawn on George Joslin, of Philadelphia, and payable July 6th, and, at the same time, received as collateral security for the payment of the same, a bill of lading for 100 bales of cotton shipped from Mobile on June 26th to Philadelphia, by the Empire S. S. Co., "to be delivered to Thomas Pierson, or order;" that Pierson had shipped the cotton on that date, and received the original bill of lading above mentioned, and that the company kept a duplicate of the same in the manifest of their cargo; that when the cotton arrived at Philadelphia, on July 2d, Joslin, who was a cotton merchant in good repute, the regular correspondent of Pierson, and had been in the habit of receiving the cotton shipped by the latter, called at the company's dock, informed the agent there that the cotton was his, and that he desired it immediately, and that the agent then allowed it to be carted to Joslin's store. When the draft was presented for payment on July 6th, Joslin had absconded. Search was made for the cotton, and it was found and replevied in the defendants' warehouse.

Then defendants showed that on July 3d, Joslin had requested an advance of $10,000 from them upon the cotton

then in his store; the advance was made, and the cotton then passed into their possession.

There was no evidence in the case affecting the *bona fides* of the transaction on the part of either plaintiff or defendant.

The plaintiffs' point, as follows, was affirmed: 1. That if the jury believe that the S. S. Company, without any authority to deliver except upon the presentation of a bill of lading, surrendered the cotton to Joslin in the manner above stated, no title passed to Joslin, and consequently none passed to the defendants.

The defendants' point, as follows, was negatived: "That a *bona fide* purchaser of a chattel for valuable consideration from one in possession takes a good title therein, unless the chattel has been stolen, or there are circumstances in the case which should have put the purchaser upon his guard."

And the Judge charged: "The bill of lading was drawn to the order of Thomas Pierson, therefore the S. S. Company had no authority to deliver it to any one but Pierson, or his order, and the delivery to another was in excess of that authority, and does not bind Pierson; the whole transaction was an attempt to deprive Pierson of his property without his act or voluntary consent."

Verdict and judgment for the plaintiffs.

The defendants took a writ of error, assigning for error the answers to the points, and the charge of the Court as above.

Lockwood, *Love*, *F. J. Alison*,	For Plaintiffs in Error.	*Mayer*, *Morgan*, *Neilson*,	For Defendants in Error.

Barker *v.* Dinsmore, 22 Sm. 427.

Before Vice-Provost MILLER.

September 29, 1875.

Blair
v.
Pennsylvania R. R. Co.

Supreme Court.

Error to Common Pleas of Lancaster County.

Trespass on the case. Plea, not guilty.

The following facts were admitted:—

Joseph Blair was a drover, and on the 1st May, 1874, was engaged in driving a drove of fifty cattle to the Philadelphia market. Near High Bridge the railroad crosses the common road by a bridge. Just beyond the bridge there are several sidings, into which, at the time when the cattle were passing under the bridge, the defendant's servants shunted a lot of trucks in so noisy and negligent a manner as to frighten the cattle, and cause a portion of them to escape from the control of the drovers. About one hundred yards down the road from the bridge, and twenty-five feet from its side, was a quarry. Into this quarry the frightened cattle ran, and several were killed. The quarry was at such a distance from the road that no danger existed for orderly passengers. Upon the trial, the jury found a verdict for the plaintiff, subject to the opinion of the Court on the following reserved point: "Whether, considering that the immediate cause of the death of cattle was the fall over the precipice, the plaintiff has any cause of action for the reason that the fall over the precipice was not the natural and necessary result of the noise occasioned by shunting the train into the siding."

Judgment for defendant on point reserved. Plaintiff assigns for error entry of judgment on the point reserved.

Peterman, *Redding*, *Scollay*, For Plaintiffs in Error.

Rodman, *Paul*, *Prichard*, For Defendants in Error.

Sneesby *v.* Lancashire and Yorkshire Railway Co., Leg.

Int., September 25, 1874; Kerr *v.* P. R. R., 12 P. F. S. 353; Fairbanks *v.* Kerr, 20 P. F. S. 86.

Before Vice-Provost Junkin.

October 6, 1875.

George Barnes and Arthur Hoopes, late trading as George Barnes & Co., to the use of George Barnes,

v.

James Grace and Arthur Hoopes, owners, and Arthur Hoopes, contractor.

Common Pleas.

Motion to strike off nonsuit.

Motion to strike off nonsuit.

This was a *sci. fa. sur* apportioned mechanic's claim, filed September 20, 1874, in style as above. At the trial, the action was defended by terre-tenants. George Barnes testified, in substance, that he and Arthur Hoopes had been in partnership as brickmakers, under the firm name of George Barnes & Co., up to September 1, 1874, when they dissolved. That the bricks for which the claim was filed had been firm property, and were supplied during the partnership to a row of houses which Arthur Hoopes was building on his private account. That after the dissolution, judging, from a view of the books, that Hoopes, his late partner, would, on a winding up, be indebted to him, he had requested Hoopes to pay into the concern the amount of the bricks furnished those buildings. Hoopes had declined, on the ground (this on cross-examination) that the bricks should be charged to him like any other item of firm property taken out of the concern by him, and that when a final balance was struck, he would pay up. The bricks had never been charged to Hoopes' private account, but, according to the custom of the firm, to the buildings to which they were delivered.

There were written articles of dissolution containing the following clause: "And that George Barnes also have power to collect the debts now due to the partnership, and to recover all and any part of the same in the name of the firm by suits at law or otherwise." The partnership accounts were unsettled when the claim was filed; but (this, under objection, overruled) had since been settled, and a balance struck against Hoopes. (On cross-examination) George Barnes said Hoopes denied the correctness of the settlement, and was no party to it, but had taken no legal steps to contest it, and was now insolvent.

Nonsuits, on motion of defendants, with leave to plaintiffs to strike off.

The plaintiffs now move to strike off nonsuit.

Allison, *Cooper*, *Carson*, } For motion. | *O'Kie*, *Dougherty*, *Hoffman*, } Contra.

Leidy *v.* Massenger, 21 Sm. 177; Klase *v.* Bright, Id. 186, 3 Brewster, 98.

Before Vice-Provost Penrose.

October 13, 1875.

United States v. *Pittsburg Judges of Election.* } Supreme Court of the United States. | Certificate from the U. S. Circuit Court for the Eastern District of Virginia.

This was an indictment founded on Act of May 31, 1870, § 4. It charged that at an election held at Pittsburg, for municipal officers, on May 2, 1874, the defendants did unlawfully prevent and obstruct from voting divers persons, to wit, A., B., etc., citizens of the United States, twenty-one years old, residents of Virginia for more than twelve months, and of Petersburgh for more than three months, resident

and legally registered voters in said election, and otherwise qualified by law to vote at said election.

The defendants demurred to the indictment on this ground: That part of the Act of Congress on which this indictment is framed is unconstitutional.

On argument, the learned Judges were divided in opinion, and certified the case to this court.

Monaghan, *Drayton*, *Dale*,

Goodwin, *Howell*, *Miller*,

See 14 American Law Register, N. S., 105 and 239.

Before Vice-Provost Hare.

October 20, 1875.

Perry & Co.
v.
Wallace.

Supreme Court.
Error to the District Court.
Trover for 25 bales of cotton.

The following facts were put in evidence:—

The cotton was fraudulently bought by Allen, a broker, from Perry & Co. Allen falsely represented to them that he was acting as agent for one McBride. Perry & Co. made inquiries as to McBride, and finding him to be of good standing, sold the cotton to Allen as his agent. Wallace, the defendant, acting as agent for Scott & Co., and without notice of the fraud, bought the cotton, in the name of his principals, from Allen, took possession of it, and the next day forwarded it to Scott & Co., by whom it was spun into yarn. Afterwards plaintiffs discovered that Allen was not the agent of McBride, and demanded the cotton from defendant, who replied that he had forwarded it to his principals, and could not return it. Plaintiff then brought this action.

The Judge charged the jury that if the defendant bought

the cotton for and in the name of his principal, he was not guilty of a conversion in forwarding it to his principal, unless he had previously been notified of Allen's want of title.

Verdict for defendant. Judgment thereon.

Plaintiff sues out this writ of error, assigning for error the charge of the Court below.

C. L. Smith, *Fallon*, *Rex*, } *Pleasants*, *Peterson*, *Esling*, }

Benjamin on Sales, § 243; Hoffman *v.* Carrow, 22 Wend. 285; King *v.* Richards, 6 Wh. 418.

Before Vice-Provost Thayer.

October 27, 1875.

King's Appeal. { Supreme Court. Certiorari to C. P. Phila. Co. In Divorce.

The evidence taken in this case was entirely *ex parte.*

The record showed, that, in the year 1857, a marriage was solemnized between the libellant and the respondent, in this Commonwealth; and, that they lived together therein as man and wife till the year 1862, when they removed to Massachusetts, where they continued living together till 1865, when the libellant claims that his wife deserted him, and has never since returned. In 1867, libellant returned to Pennsylvania, and in 1871 commenced these proceedings in divorce. The respondent still resides in Massachusetts.

It appears that the respondent never received any actual notice of the proceedings, and was merely held a party to the suit, by virtue of the Act authorizing proceedings on alias writs of subpœna, and publication.

On final hearing, the Court below in view of the foregoing facts granted a divorce.

The respondent afterward hearing of it, now removes this

case by certiorari to the Supreme Court, and assigns for error the decree of the Court below.

H. C. Smith, *Cuyler*, *Phillips*, } For Appellant.

Neff, *Prosser*, *McCormick*, } For Appellee.

Dorsey *v.* Dorsey, 7 W. 349; Act of April 26, 1850; Bishop *v.* Bishop, 6 Casey, 412; Reel *v.* Elder, 12 Sm. 308.

Before Vice-Provost Mitchell.

November 3, 1875.

Dutton's Estate. { Supreme Court. Appeal from decision of Orphans' Court of Philadelphia County.

Jacob Dutton died October 25th, 1872. Among his papers was found a small scrap of paper on which was written in *lead pencil* the following words:—

Last Will.
Oct. 2d, 1862.

I wish my two brothers, John and Henry Dutton, to have all my property after paying my debts and funeral expenses.

JACOB DUTTON.

Proof was offered by two witnesses that the signature was in decedent's handwriting.

The Register refused to admit the paper to probate, and his decision was sustained by the Orphans' Court.

From this decision John Dutton appeals.

Brock, *Beitler*, *Boyle*, } For Appellant.

Lane, *Lee*, *Love*, } For Appellee.

Patterson *v.* English, 21 Sm. 454; Woodward's Will, 1 Weekly Notes, 177.

Before Vice-Provost McMurtrie.

November 10, 1875.

Penna. R. R. Co.
v.
Wm. Austin.

Supreme Court.

Error to Common Pleas.

This was an action of trespass by Austin against the Pennsylvania Railroad Co.

At the trial the following facts were proved :—

On October 1st, 1873, Wm. Austin purchased for $100 from the Pennsylvania Railroad Co. a book of coupon tickets entitling him to fifty rides on their cars between New York and Philadelphia before October 1, 1874. On the face of each coupon were printed the words "*Good for one first-class passage on all trains of the Company between New York and Philadelphia.*" The usual first-class fare of the Company between the points named was $3.25; for passage in Pullman palace cars 50 cents extra was charged. The usual time between New York and Philadelphia was three hours.

On January 1, 1874, the Company advertised a new train styled "the limited New York express," which ran through in 2½ hours, composed only of Pullman palace cars, for a trip in which the Company charged $4.25. On the 1st of April, 1874, Wm. Austin took passage in that train, and in addition to tendering a coupon ticket offered 50 cents, the usual extra fare for riding in Pullman cars; this the conductor refused, and ejected Austin from the car.

The plaintiff submitted the following points, which were affirmed :—

"1. That the words 'Good for one first-class passage on all trains of the Company between New York and Philadelphia,' referred not only to trains running at the time of the purchase of the tickets but to all trains which should be run before October 1, 1874."

"2. The fact that the Pullman Palace Car Company owned the cars run upon the train does not take it out of the class

mentioned, *i. e.*, 'all trains of the Company between New York and Philadelphia.'

"3. That the fact that the Company gave greater comfort and rapidity in travel than was given at the time of the purchase of the tickets, does not impose upon the plaintiff any obligation to pay any fare additional to that required at the time of such purchase."

Defendant's point as follows was negatived: "That the contract did not contemplate the privilege of riding in any such train; and that the plaintiff must pay additional fare for everything not intended to be included in the contract."

The Judge in his general charge spoke thus: "It is admitted that the plaintiff, on any other train, could have ridden in Pullman car upon tender of a coupon and payment of 50 cents. [The fact that the Company left off their ordinary first-class cars cannot take away from him the right he previously possessed. His coupon entitled him to the best first-class facilities the Company afforded, and the right to ride in Pullman car upon payment of 50 cents extra."]

Verdict for plaintiff. Judgment thereon.

Defendant Company assigns for error, 1, the affirmance of plaintiff's points; 2, the rejection of defendant's point; 3, that part of the charge inclosed in brackets.

Carr, *Fenton*, *Guilbert*, } For Plaintiff in Error.

Morgan, *Leaming*, *Jones*, { For Defendant in Error.

Before Vice-Provost Miller.

November 17, 1875.

Wallace v. *Campion.* } Common Pleas. In Equity. Hearing on Bill and Answer.

The bill set out these facts:—

Thomas Gamble died March 1st, 1855. His last will made

June 1st, 1854, reads as follows: "*Item*, I give, devise, and bequeath the annual profits of my estate to my daughter Matilda, for and during the term of her natural life, and after her decease, I direct that my estate shall be equally divided among such of her children as are then living, and the issue of such of them as may then be dead, to have and to hold, to them their heirs and assigns forever, the said issue of such of them, as may then be dead, however, taking and among themselves equally dividing such part and share only as their parent would have had if living, to be paid to each child as he or she shall respectively attain the age of twenty-one years, provided always that the estate devised to my said daughter shall be in the care of my executor, William Campion, for the term of her natural life, to receive and pay over the interest and income thereof to my said daughter for her sole and separate use, without being in any wise liable to the debts, control, or interference of her husband; and I do further direct that, if my said daughter should die without issue, in that event my estate shall be given to my own next of kin."

Matilda was ten years old at the death of her father. In June, 1872, she was married to George Wallace.

Wallace and wife now file the above bill in the right of the wife against Campion, praying a conveyance of the estate to the said wife.

The defendant in his answer denied that the said Matilda was entitled to anything but the income under the will of her father.

Carter, *Paul*, *Prichard*,	}	For Complainants.	*Swartz*, *Rush*, *Stein*,	}	For Defendants.

Earp's Appeal, 25 Sm. 119.

Before Vice-Provost Junkin.

November 24, 1875.

Barron's Appeal. } Supreme Court. Appeal from Orphans' Court.

John Young died March 1st, 1860, leaving a wife, Ellen Young, and three children, William aged 14, Sarah aged 12, and Martha aged 3. William and Sarah were the children of a former wife.

He left the following will: "All my estate, real, personal, and mixed, I devise to my executor, Samuel Barron, in trust, to permit my wife Ellen to receive the rents and profits thereof for her own use and benefit and for the maintenance and education of my children, and subject to such trusts, in trust, after the decease or marriage of my wife Ellen, for my children in equal shares."

The income of the estate amounted to $3000 per annum, and was used for the joint support of the whole family till April, 1870, when Sarah married Thomas Collyer, since which time she and William have resided apart from their mother.

In 1872 William and Sarah filed a petition in the Orphans' Court setting forth the above facts, and praying that Barron be instructed to pay over to each of them one-third of two-thirds of the income of the estate accruing since April, 1870.

Barron answered that under the will the whole income was given to the widow for life, and that the children were only entitled to such maintenance as she saw fit to give them; and that William was receiving a large salary, and Sarah was amply provided for by her husband. The Court decreed according to the prayer of the petition. Barron appeals.

Townsend, Redding, Rex, } For Appellants.

C. B. Taylor, Mayer, Castle, } For Appellees.

Paisley's Appeal, 20 Sm. 153.

Before Vice-Provost Penrose.

December 1, 1875.

Patrick McCafferty

v.

Pauline Gelinotte.

Supreme Court.
Error to D. C.
Action of assumpsit on promissory note for $1000.

The plaintiff proved his note and rested. Defendant then proved the following facts, which were not disputed.

Plaintiff was lessee of certain premises which, whenever the wind was easterly, were rendered very uncomfortable by a noxious smell arising from an old well and sewer adjoining, and he sold his lease and gave possession to Mdlle. Gelinotte, the defendant, who was a ladies' hair-dresser, taking the note sued on for the purchase money. Before the sale plaintiff showed defendant over the premises several times, and pointed out how suitable they were for her business in a great number of particulars, which were all substantially true. Plaintiff knew of the disagreeable smell, for it was on that account he was leaving the premises. But he did not inform defendant of the smell, and at no time when she visited the premises was the wind from the east, nor was there anything whatever to indicate to her or to any one, that there was any such smell. The bargain was concluded and defendant moved in. Shortly afterwards an easterly storm set in which lasted several days, during which many of defendant's customers called but refused to remain on account of the smell, and in consequence defendant lost much of her custom and was obliged to remove in order to retain any portion. She thereupon immediately tendered possession to plaintiff and demanded back the note, which was refused.

Plaintiff asked the Court to charge—

1st. That he was not bound to communicate to defendant the fact that the premises were subject to annoyance from the smell.

2d. That the facts proved show no defence to the action.

The Court negatived both points. The jury found for defendant. Judgment thereon.

Plaintiff assigns for error the refusal of the Court to charge as requested.

Cox, *Gordon*, *Goodwin*,	For Pl'ff in Error.	*H. S. Gregory*, *Rodman*, *Bleight*,	For Def'nt in Error.

Caldwell *v.* Boyd, 7 Sm. 324; Story's Equity, §§ 210, 211; 2 Kent's Com. 482.

Before Vice-Provost Hare.

December 8, 1875.

Rebecca Sharp v. *The Mount Vernon Ins. Co.*	Court of Common Pleas. Motion for judgment on point reserved.

This was an action of covenant. On the trial plaintiff offered in evidence a policy of insurance for $5000 issued by defendants on the life of John Simpleman, upon the application of, and payable to plaintiff. Plaintiff also proved that at the time the policy was issued, and up to the time of his death, the said John Simpleman was engaged to be married to her. Plaintiff proved no other interest in the life of decedent.

The Court reserved the point, whether the engagement of marriage was such a relation as to give the plaintiff an insurable interest in the life of Simpleman. Verdict for plaintiff for $5000.

Defendant now moves for judgment on the point reserved.

Crawford, *Baird*, *F. I. Alison*,	For motion.	*Darrach*, *Fallon*, *Dale*,	Contra.

Chisholm *v.* National Life Ins. Co., 52 Mo. 213.

Before Vice-Provost THAYER.

December 15, 1875.

Mansfield v. *The State of Pennsylvania.* — Supreme Court of the United States. Error to Supreme Court of Pennsylvania.

The plaintiff in error was indicted and convicted in the Court of Common Pleas of Philadelphia County of selling liquor at retail in the 22d ward of the city of Philadelphia, contrary to the provisions of the Act of March 27, 1872.

On the trial it was put in evidence that the liquor sold had been purchased and was in possession prior to the time at which this act went into operation, and the defence set up that said act was in violation of the XIV. amendment to the Constitution of the United States.

The Supreme Court of the State sustained the judgment of the lower Court, and writ of error is now brought to this Court.

Junkin, *Page*, *Hoffman*, for Plaintiff in Error.

O'Kie, *Peterman*, *Neilson*, for Defendant in Error.

Sedgwick on Construction of Statutory and Constitutional Law, 535 (n), 565 (n); Bartemeyer *v.* Iowa, 18 Wall. 131.

Before Vice-Provost MILLER.

December 22, 1875.

Coles's Appeal. — Supreme Court. Certiorari to Orphans' Court.

The following facts appeared in the report of the Auditor appointed to make distribution of the estate of John Gates, deceased.

William Gates, after sundry specific bequests, devised and

bequeathed as follows: All the rest, residue, and remainder of my estate, real, personal, and mixed, to my executor, Joseph Coles, in trust for my imbecile son, John Gates."

Upon the death of the testator in 1867, his estate was found to consist in part of stock in the Lehigh and Susquehanna Coal Co., the market value of which was then $45 per share. In 1874, when John Gates, the *cestui que trust*, died, owing to the sudden business depression, the stock had fallen to $20.

Upon the auditing of the account of the trustee, the administrator of Joseph Gates asked that the trustee be surcharged $5000, the difference in value of 200 shares between 1867 and 1874.

The trustee produced evidence that William Gates had been a director in the Coal Co. for many years, and had often expressed the utmost confidence in its stability, also that the stock was largely invested in by the shrewdest business men in the community. Notwithstanding this evidence the trustee was surcharged $5000.

Coles, the trustee, appeals from the decree of the Orphans' Court, which, notwithstanding exceptions on his part, confirmed this report.

Lee, *Drayton*, *Miller*, } For Appellants.

Peterson, *Prosser*, *Scollay*, } For Appellees.

Barton's Estate, 1 Parsons' Equity Cases.

Before Vice-Provost Mitchell.

December 29, 1875.

In re Cope's Estate. { Orphans' Court. Sur Exceptions to Auditor's Report.

The facts found by the auditor were as follows:—

Ezra Cope, the decedent, was a merchant doing business in Philadelphia. At different times between September, 1872,

and June, 1873, he procured five "paid up" policies of insurance on his life for $5000 each, payable to his wife. Upon each policy he paid in cash a premium of $1475. On July 5th, 1873, he died, leaving a will by which he appointed Isaac Preston his executor. It is admitted that the decedent had been hopelessly insolvent for more than a year previous to his death, and that he paid the premiums on the policies of insurance with moneys drawn from his business. Isaac Preston, the executor, filed an account in which these policies were not included. The auditor reported that the insurance being in fraud of creditors the executor should be surcharged with the amount of the five policies.

To this report the executor excepts on the ground:—

1st. That an insurance for the benefit of a wife is not a fraudulent conveyance within the statute of 13th Eliz.

2d. That by the Act of Assembly of 15 April, 1868, the widow has the exclusive right to the proceeds of said policies.

C. L. Smith, *Pleasants*, *Philips*, } For Exceptions. — *Watson*, *J. B. Taylor*, *Swartz*, } Contra.

Stokes *v.* Coffey, 8 Bush (Ky.) 533; Appeal of Elliott's Executors, 50 Pa. St. Rep. 75.

Before the Provost.

January 5, 1875.

Fennimore v. *Cooper.* } District Court of United States. Demurrer.

Action on the case for damages.

The declaration alleged that the plaintiff, a resident of the State of New York, was the purchaser from one Dion Boucicault of the exclusive right to perform or represent a certain dramatic composition, entitled "The Waterwitch," and in order to secure his rights had complied with the provisions

of the Act of July 1, 1870. That the defendant, proprietor of the Chestnut Street Theatre, in the city of Philadelphia, Pa., had caused said play to be performed there, and thereby greatly impaired plaintiff's profits, upon a subsequent representation of the same in that city.

Defendant pleaded specially that the author of the play was a foreigner, and that it had been printed and published throughout the United States for at least three months previous to his having caused it to be performed at his theatre.

Plaintiff demurs generally.

Dougherty, *Alcorn*, *Carson*, } For Demurrer. — *Adams*, *Carr*, *Esling*, } Contra.

Vide American Law Review, Oct. 1874, pp. 14, 15, 16. "International Copyright Law of Literature and Art."

Before Vice-Provost Junkin.

January 12, 1876.

Williams, to the use of Selby,
v.
Johnson.
} Common Pleas. In Banc. Motion for Judgment.

Action on the case.

Thomas Williams devised all his property, real and personal, to Henry Johnson, in trust "to collect and receive the rents, income, and interest therefrom, and to pay the same over to my son Samuel, for his own use and benefit for his natural life, without being subject to levy and execution for his debts, and after his death, to assign, convey, and transfer in such manner as my son shall appoint, and in defalt of appointment to convey to the heirs of my said son."

Samuel became embarrassed in his business, and made an assignment to Charles Selby for the benefit of his creditors, and assigned, *inter alia*, all his estate, right, and interest in the

property devised to Henry Johnson in trust by his father. This assignment was duly recorded.

The trustee refused to pay the income and interest to the assignee, who brought this action to recover it from him. The Court directed the jury to find for the plaintiff, reserving the question, whether Samuel had an assignable interest.

The defendant now moves for judgment "*non obstante veredicto.*"

W. H. Allison,
Guilbert,
Jones, } For motion.

Lane,
Love,
McCormick, } Contra.

Keyser's Appeal, 7 Sm. 236.

Before Vice-Provost Penrose.

January 19, 1876.

Verigreen

v.

The Penna. R. R. Co.

Supreme Court.

Error to Common Pleas.

Action on the case. Plea, "not guilty."

In the Court below the following facts were put in evidence: That plaintiff purchased from the defendants, at Pittsburg, tickets for himself and wife to Philadelphia, and they took their seats in the train. That while it was proceeding on its way, he was accosted by two others of the passengers and requested to join them in a game of cards, which after some reluctance he consented to do, winning in the outset of the game over $300, but in the course of an hour losing $2000, and that the men then left the train. It was further proven that the conductor saw the game in operation, that he knew that it was for money, that he knew that the men who were playing with the plaintiff were professional gamblers, and that he did not notify the plaintiff of this latter fact, though he was requested to do so by several of the passengers, and was entreated to stop the

game by the wife of the plaintiff, who did not know that the men were professional gamblers.

Upon these facts the Judge in the Court below charged the jury, "that though the company were bound to protect their passengers from all injury or damage while upon the train, yet the plaintiff by his voluntary participation in the game had induced the injury declared upon and was estopped from suing for the amount of his loss."

Verdict for the defendant. Judgment thereon.

Plaintiff sues out this writ of error, and assigns as error the charge of the Court below.

Boyd, *Carter*, *Castle*,	For Plaintiff in Error.	*W. M. Gregory*, *Gross*, *Harris*,	For Defendant in Error.

R. R. Co. *v.* Pillow, 32 Legal Intelligencer, 51.

Before Vice-Provost McMurtrie.

January 26, 1876.

Timothy Oates

v.

City of Philadelphia.

Supreme Court.

Error to Common Pleas.

Case.

This action was brought to recover the value of a horse and wagon belonging to the plaintiff.

The evidence showed that the plaintiff was driving with his two daughters in East Fairmount Park, along the river road; while rounding the sharp curve just above the tunnel, the noise of a train crossing the railroad bridge above, together with the whistle of the locomotive, so alarmed the horse, who was ordinarily very manageable, that he became fractious and commenced backing. Oates, fearing least he might back over the bank, jumped out and took him by the head. The horse continued backing until Oates tripped over a stone, when he

plunged off, upset the wagon, threw out the girls, and then went over the bank and was drowned.

The plaintiff offered to show that since this accident the city have erected a barrier at this place. This evidence the Court refused to admit.

The defendant proved that the road where the accident occurred was sixty feet wide.

The jury found a verdict for the plaintiff subject to the point reserved; "Whether the facts above set forth were any evidence that the damage to the plaintiff was the result of negligence on the part of the city." Subsequently judgment for defendant on point reserved. Assignments of error: the refusal to admit the evidence, and entering judgment for defendant on the point reserved.

Brock, *Mayer*, *Monaghan*,	For Plaintiff in Error.	*Leaming*, *Redding*, *Norris*,	For Defendant in Error.

Hey *v.* The City, 31 Legal Intelligencer; R. R. Co. *v.* McElwee, 17 Sm. 311.

Before the Provost.

February 2, 1876.

Sarah Collins

v.

The Mutual Life Ins. Co.

Supreme Court.

Error to Common Pleas.

Covenant on a policy of insurance. To a declaration on a policy of insurance whereby Collins had insured his life for the benefit of his wife, on April 1, 1869, for $10,000, the defendant pleaded in bar the breach of the following covenant: "if the said Collins shall not without delay, on April 1, of every year, pay to the said company the annual accruing premium, then this policy shall be void, and all rights and demands of insurance against the company shall cease and determine."

At the trial the following facts were proved:—

The premium was regularly paid until March 31, 1875; while pursuing his regular avocation, Collins was stricken down with paralysis and carried to his bed speechless. His family, knowing nothing of the insurance, paid no premium on April 1; but on April 5, Collins recovered sufficiently to make known the case to his wife, who immediately tendered the amount of the premium to the company. The latter, knowing the condition of Collins, refused to receive it. On April 10, Collins died. Payment of the policy, being refused, suit was brought for the amount insured. The plaintiff presented the following point: "If the jury find that the payment of the premium on April 1 was prevented by the act of God, and that the same was tendered at the first possible moment afterwards, the forfeiture is done away with." His point was refused. The Judge charged, "The payment of the premium on April 1 was an inseparable condition precedent to the continuance of the policy."

Verdict for defendant.

Assignment of error, the charge of the Court, and the refusal of the plaintiff's point.

Neff, *Page*, *Beitler*, } For Plaintiff in Error.

Savage, *Swartz*, *Rush*, } For Defendant in Error.

Hillyard *v.* Ins. Co., 35 N. J. Law, 415; Howell *v.* Ins. Co., 44 N. Y. 276; 13 Amer. Law Register, N. S. 610.

Before Vice-Provost Hare.

February 9, 1876.

Smith

v.

The Commonwealth.

Supreme Court.

Error to Quarter Sessions of Philadelphia County.

Fanny Smith was indicted at the March Term, 1874, of the Court of Quarter Sessions of Philadelphia County, for feloniously receiving twelve books, the property of the Phila-

delphia and Reading Express Company, well knowing the same to have been stolen.

The evidence at the trial disclosed the following facts:—

On the 28th day of January, 1874, George Miller delivered a package of books to the Philadelphia and Reading Express Company, at Allentown, Pa., to be forwarded to Philadelphia, which package was shortly afterward stolen from the express office at Allentown. On January 29, 1874, a package containing twelve of the books was delivered to the Philadelphia and Reading Express Company at Bethlehem, Pa., by a man calling himself Samuel Green, to be forwarded to Fanny Smith, 1805 Race Street, Philadelphia. Green paid the express charges on the goods. On January 30, 1874, the books arrived at Philadelphia. Meanwhile the theft had been discovered, and when the books arrived at Philadelphia a detective employed by the Company opened the package, and, having satisfied himself that it contained a portion of the stolen property, tied it up again and directed a driver of the Express Company to take it to 1805 Race Street. The driver did so, saw the prisoner, and delivered her the package. About an hour afterwards the detective visited the house, found the books, and arrested the prisoner. Evidence was given on behalf of the Commonwealth, showing conclusively that the prisoner knew that the books were part of those stolen from Allentown.

The Court charged the jury, that if the prisoner received the books knowing them to have been stolen, she was guilty, although the theft had been discovered by the Express Company before delivering the books.

To this charge a bill of exceptions was sealed.

The prisoner was convicted, and sentenced to one year's imprisonment.

A writ of error having been duly allowed and taken, the plaintiff in error assigns for error the charge of the Court below.

Cooper, *Fallon*, *Gordon*, } For Plaintiff in Error.

Hamersly, *Robinson*, *Neilson*, } For Defendant in Error.

The Queen *v.* Fanny Schmidt, Law Rep. 1 C. C. R. 15.

Before Vice-Provost Thayer.

February 16, 1876.

Thackeray's Appeal. } Supreme Court.
Appeal from the Orphans' Court.
Philadelphia County.

William Thackeray died in 1849, leaving considerable property in trust for the use of his daughter Anne during her life, with remainder over to her brothers "if she died without issue and intestate." In 1850 Anne became engaged to Charles Dickens, and made a will in presence of two witnesses, in which she devised and bequeathed to her intended husband all her property whether held in her own right, or subject to her appointment under the will of her father. They were married in 1851, and the year following Mrs. Dickens died without issue.

A few days previous to her death she called before her the two persons who had witnessed her will, and having the will in her hands, she said: "It is my desire that this will shall take effect, and that my husband, who is the only one to be benefited by it, shall have all my property as directed in this will."

The will was admitted to probate by the register, and letters testamentary issued to Dickens, who was appointed executor by the will. The brothers appealed from the decision of the register, granting the letters, to the Orphans' Court, which sustained the register's decision. From this decree they now appeal to the Supreme Court.

Junkin, *Paul*, *Rex*, } For Appellants. *Peterman*, *C. B. Taylor*, *Stein*, } For Appellees.

Fransen's Will, 2 Casey, 202.

Before Vice-Provost McMurtrie.

February 23, 1876.

Holton
v.
Crenshaw.

Supreme Court.

Error to Common Pleas.

Error to the Common Pleas of Philadelphia County.

This was an action on the case for negligence.

On the trial plaintiffs proved that in 1873 defendant was recorder of deeds. Hobson applied to plaintiff for a loan of $5000, offering a first mortgage upon certain real estate owned by him, as security. Matthews, the conveyancer selected by plaintiff, requested Hobson to get from the recorder searches on this property. Hobson signed an order on the recorder for such searches, which were subsequently furnished duly signed by defendant, Hobson paying the legal fees therefor. A first mortgage of $4000, which existed against the property, was omitted in the certificate of search. The certificate being shown to Matthews, the money was loaned to Hobson, who was at that time really insolvent. The property realized only enough to pay the first mortgage. On the trial the Judge instructed the jury to find only the amount of damage suffered by plaintiff, reserving the points whether there was evidence that Hobson acted for himself, and, if he were plaintiff's agent, whether his knowledge was to be imputed to plaintiff, as also whether the recorder was liable in this case. The jury brought in a verdict for $5339 damages.

Judgment for plaintiff, which judgment plaintiff now assigns for error.

Lockwood, *Peterson*, *Prichard*, } For Plaintiff in Error.

Uhle, *Pleasants*, *J. B. Taylor*, } For Defendant in Error.

1 Weekly Notes. Girard Building Association *v.* Houseman, p. 116.

Before Vice-Provost Mitchell.

March 1, 1876.

James Harris
v.
Martha Lewis.

Supreme Court.

Error to Common Pleas.

In 1839 Charles S. Harris died, having by his last will devised as follows: "I devise to Pomeroy Lewis and his heirs my three houses and lots at the northwest corner of Broad and Orange Streets in the city of Philadelphia, to hold to him and his heirs until a church shall be erected at the southeast corner of Broad and Orange Streets."

The said Pomeroy Lewis in 1840 married the defendant, and died in 1850, leaving his widow and two children surviving him. A church was, in 1870, erected at the southeast corner of Broad and Orange Streets, and the plaintiff in 1871 as sole heir-at-law of Charles S. Harris, brought this ejectment against the defendant for the house and lot which had been assigned to her for dower.

The Court charged that if the jury believed the foregoing facts they should find a verdict for defendant, which is here assigned for error.

Boyle, *Drayton*, *Carson*, } For Plaintiff in Error.

Dougherty, *Goodwin*, *Freedley*, } For Defendant in Error.

Doe *v.* Hutton, 3 B. & P. 654; Evans *v.* Evans, 9 Barr, 192.

Before Vice-Provost MILLER.

March 8, 1876.

Harrison
v.
Grambo.

Supreme Court.

Error to District Court.

Action of replevin.

Judgment on a promissory note was obtained against defendants in District Court in favor of Edwards, upon which a *fi. fa.* was issued, and the sheriff thereupon levied upon and sold a large iron pillar and clock belonging to defendant, which were purchased by plaintiff at the sheriff's sale. There was no waiver of condemnation.

The pillar was fifteen feet high above the ground, and was sunk six feet in the ground on the outer edge of the pavement in front of defendant's premises. It was of an average diameter of ten inches, and weighed 2240 pounds. The pavement closed around the base of the pillar, on the top of which the clock rested, the pillar being so moulded as to exactly fit the clock, and they were securely fastened together by means of screws. The clock was three feet in diameter.

Defendant was the owner of the premises in fee, and occupied them for his business, which was that of a banker and money broker. His name was on the clock as a sign.

The Court charged the jury that plaintiff could not recover, as no title passed by the sheriff's sale, because the pillar and clock were part of the realty, and could not be sold without condemnation.

Verdict for defendant. Judgment thereon.

The only error assigned was that the Court erred in saying that both the pillar and clock were realty.

Carter, *C. L. Smith*, *Scollay*, } For Plaintiff in Error.

Washington, *Weeks*, *Wetherill*, } For Defendant in Error.

Meigs's Appeal, 12 Sm. 28; Gray *v.* Holdship, 17 S. & R. 415.

Before Vice-Provost JUNKIN.

March 15, 1876.

In re Thomas Vane's Will. — Orphans' Court. Appeal from the Register of Wills for the City and County of Philadelphia.

Thomas Vane, a bachelor, died on the 10th day of June, 1874. Among his papers was found an envelope, containing a will dated May 18th, 1868, directing his estate real and personal to be divided between his three nephews, the sons of his late brother James, in equal parts.

The envelope bore the following endorsement in the handwriting of the decedent:—

"Albert Branson, the son of my late sister Jane, is my heir.

THOMAS VANE.

June 1st, 1874."

The envelope was offered to the register for probate. He refused to admit it, whereupon Albert Branson appealed to the Orphans' Court.

Morgan, Boyd, Miller, For Appellants.

Watson, Williams, Wilkinson, For Appellees.

Woodward's Will, 1 Weekly Notes, 177.

Before the PROVOST.

March 22.

State Bank of St. Louis v. *Andrews & Co.* — Supreme Court. Error to Common Pleas of Philadelphia Co. Replevin.

This was a replevin brought by the State Bank of St. Louis against Andrews & Co., of Philadelphia, for 170 bales of cotton,

for which a property bond was then entered and goods delivered by the sheriff to the defendants. Pleas: *Non cepit, property in the defendant.*

Upon the trial the following facts were undisputed. In September, 1874, Norton & Co., of St. Louis, shipped to Moses & Bro., of Philadelphia, 170 bales of cotton by the Star Transportation Co. The original bill of lading was transferred by Norton & Co. to the plaintiffs as collateral security for a draft of $10,000, drawn by Norton & Co. upon Moses & Bro. and discounted by the bank. The duplicate bill of lading was forwarded to Moses & Bro. The plaintiffs sent the draft with the original bill of lading pinned on, to the Eastern Bank, their correspondents in Philadelphia, for collection; who on October 1, 1874, sent it by their runner up to Moses & Bro. for acceptance. The draft was taken by Moses into a back room, where the original bill of lading was detached, and the duplicate substituted. The draft was then handed back to the runner, accepted, who did not notice the substitution, nor did the officers of the Eastern Bank. On October 10th, the draft was protested.

On October 2d, Moses endorsed this original bill of lading to Andrews & Co. for an advance of $10,000; the latter on the day following obtained the cotton from the Transportation Co. It was admitted that the advances were made by Andrews & Co., *bonâ fide* and without notice.

The plaintiff presented the following point: "If the jury find that the bill of lading was stolen, then no property in the cotton passed to the defendants."

This point was refused, and the Court charged: "Though before the Act of 24 September, 1866, a bill of lading may have been a mere symbol, and its negotiation have produced no greater effect than the delivery of the goods represented by it, since the last-mentioned Act, there can be no doubt that bills of lading are negotiable instruments, and whether stolen or not pass, to *bona fide* purchasers, the property in the goods represented."

Verdict and judgment for the defendants.

The plaintiff takes a writ of error, assigning for error the refusal of his point and the charge of the Court below.

H. C. Smith, *Cuyler*, *Hoffman*,	For Plaintiff in Error.	*Lane*, *Monaghan*, *Stein*,	For Defendants in Error.

Empire Transportation Co. *v.* Steele, 20 Sm. 188; Notes to Lickbarrow *v.* Mason, 1 Leading Cases; Act 24 September, 1866.

Before Vice-Provost Penrose.

March 29, 1876.

Ex parte Woodsides. — Supreme Court of the United States.

Argument on motion for a habeas corpus to bring up the body of Mordecai Woodsides, now in the custody of A. B., Sergeant-at-arms of the House of Representatives at Washington, now in session. Under a commitment of said House for an alleged contempt, which fact has been set forth in the petition.

Darrach, *W. M. Gregory*, *Castle*,	For Petition.	*Lockwood*, *Gross*, *Harris*,	Contra.

Stockdale *v.* Hansend, 9 A. & E. 1; Anderson *v.* Dunn, 6 Wheaton, 204; Ex parte Kearney, 7 Wheaton, 38.

Before Vice-Provost Hare.

April 5, 1876.

Simpson, Admr. of Louisa Hillman, deceased,

v.

The Union Coal Company.

Court of Common Pleas.

Motion for judgment on point reserved.

Henry B. Hillman, by an agreement, under seal, dated May 5, 1870, "leased, demised, and to mine let" unto the Union Coal

Company, their successors and assigns, all the coal in a certain strata or seam known as the Hillman vein, "being in, upon, and under a certain tract of land of the said Hillman, situate in Luzerne County, Pennsylvania;" and in the said agreement particularly described, together with the right to enter upon and into the said lands, and to mine, dig, and remove the said coal, or any part thereof, in such manner and at such times as they may desire. The said Union Coal Company agreed to mine not less than 36,000 tons of coal in any one year, and to pay for all coal so mined and taken out under the said agreement twenty-five cents per ton, payments to be made quarterly. The agreement to determine in twenty years, unless the coal in the said vein should be sooner exhausted, with privilege to the said Union Coal Company to continue the said agreement till all the coal in the said vein should be mined and removed.

Hillman afterwards married.

On April 31, 1871, Hillman and his wife were both killed in a railroad accident.

By his will he left, *inter alia*, all his real estate to his wife Louisa for life, and one-half his personal estate absolutely. Louisa Hillman died intestate.

Letters of administration were granted to Simpson as administrator of Louisa Hillman, who brought an action of covenant against the Union Coal Company to recover one-half the royalties accruing under the said agreement since the death of Hillman, and at the trial of the cause produced evidence to prove that Louisa Hillman survived her husband.

The learned Judge, at the trial of the cause, reserved the point "whether the royalties to be paid by the said Union Coal Company under the said agreement, should be considered as part of the personal estate of the decedent Hillman, and a proportionate part be paid to her administrator under the terms of the will, or whether they formed part of his real estate and descended to his heirs on the death of his wife."

The jury were instructed that if they believed that Louisa

Hillman survived her husband, their verdict should be for the plaintiff, subject to the point reserved.

Plaintiff now moves for judgment on the point reserved.

Alison, *Howell*, *Dale*, } For Motion. — *Fenton*, *McClees*, *Clay*, } Contra.

Carnahan *v.* Brown, 10 Sm. 23; Caldwell *v.* Fulton, 7 C. 475.

Before Vice-Provost Thayer.

April 12, 1876.

In re Carberry. { Circuit Court U. S. 3d Circ. Appeal from District Court U. S., Eastern District of Penna.

On November 27, 1874, Thomas Carberry, a resident of the above district, filed his petition in bankruptcy, and upon the 28th of November was adjudicated a bankrupt. On December 14, 1874, John Wigfall, a resident of Ohio, proved his claim before the register against said bankrupt's estate on a promissory note for $5000, signed by the bankrupt and dated Columbus, Ohio, January 4, 1867. To this claim objection was made by the bankrupt, and the other creditors, upon the ground that it was barred by the statute of limitations of Pennsylvania. The register thereupon certified to the District Court the following question:—

Whether a debt which is barred by the statute of limitations of Pennsylvania where the bankrupt resides, but not barred by the statute of limitations of Ohio where the creditor resides and where the contract was made, can be proved against the bankrupt's estate.

The District Court decided that the debt was barred and could not be proved. From this decision Wigfall appeals.

Crawford, *Norris*, *Jones*, } For Appellant. — *Lee*, *O'Kie*, *Bleight*, } For Appellee.

In re Ray, 7 Am. Law Reg., N. S. 283; *In re* Sheppard, 7

Am. Law Reg., N. S. 484; *In re* Harden, 1 B. R. 97; *In re* Cornwall, 9 Blatchford, 114.

Before Vice-Provost McMurtrie.

April 19, 1876.

Insurance Company | Supreme Court.

v. | Error to Common Pleas of Alleghany Co.

Burson. | Covenant.

Adam Burson, on May 5, 1865, insured his life for $15,000 in favor of his wife in the American Life Insurance Company. Subsequently, while laboring under a depression of spirits caused by business trouble, on June 10, 1873, he shot and killed himself.

The policy contained the following proviso, that it should be void "if the insured should die by suicide."

The widow brought an action of covenant on the policy, and upon the trial the jury found a special verdict that "Burson was insane, but intended by the shooting to take his life, knowing that death would result from what he did."

The Court thereupon entered judgment for the plaintiff upon the verdict for the full amount with interest, which the defendant now assigns for error.

Pleasants, *Phillips*, *Rex*, } For Plaintiff in Error.

Wilkinson, *Wetherill*, *Rush*, } For Defendant in Error.

Boileau *v.* Insurance Co., 1 W. N. 145.

Before Vice-Provost Mitchell.

April 26, 1876.

McManus
v.
Passenger Railroad Co.

Common Pleas.

Demurrer to Declaration.

Action of trespass on the case to recover damages for injuries received by plaintiff while getting off from a car belonging to defendants.

The declaration laid the time at which the injuries were received as July 3, 1872.

Defendants demur, and say that the declaration is insufficient in law to maintain the action, because having been brought to March Term, 1874, more than six months had elapsed since the right of action as laid in the declaration, to wit, July 3, 1872, had accrued.

Issue was joined on the demurrer.

Prosser, *Carr*, *Harris*, For Demurrer.

Savage, *Williams*, *Redding*, Contra.

McCarty *v.* Hestonville and Mantua Railroad, 1 W. N. 312.

Before Vice-Provost Hare.

May 3, 1876.

In re Coe & Co., *Bankrupts.*

United States District Court.
Eastern District Pennsylvania.
In Bankruptcy.

Exceptions to ruling of register.

Coe & Co., bankers of Philadelphia, suspended payment September 17, 1873, with liabilities greatly in excess of their available assets. Among their largest creditors was the firm of Coe, McMartin & Co., of London, composed of several mem-

bers of the firm of Coe & Co., and three English partners. The assets of the two houses were distinct and independent. Coe & Co. were adjudgd bankrupts October 10, 1873, and Lane appointed trustee under the 43d section of the Bankrupt Act to wind up the estate.

Coe, McMartin & Co. suspended payment March 1, 1874, being largely indebted to the United States Government on account of deposits with them by naval paymasters. To secure this debt to the United States, Coe, McMartin & Co., March 10, 1874, assigned to the government all their claim against Coe & Co.

On May 1, 1874, the Secretary of the Navy presented this claim against Coe & Co. before the register and demanded payment of it in full before any distribution of the assets should be made among the other creditors.

The register admitted the claim.

To this ruling of the register, Lane, the trustee, excepts, on the ground that the debt or claim accruing to the United States under the circumstances mentioned is not within the Act of Congress of March 3, 1797, ch. 74, § 5.

Lane, *Peterman*, *Rush*,	For Exceptions.	*Morgan*, *Rodman*, *Baird*,	Contra.

Howe *v.* Sheppard, 2 Sumner, 133.

Before Vice-Provost Miller.

May 10, 1876.

Commonwealth ex rel. Brown v. *Stultz.*	Common Pleas.	

John Stultz, a minor under the age of seven years, upon the petition of his guardian, was bound out by the Orphans' Court for the County of Philadelphia, as an apprentice to

Josiah Brown, a grocer. The guardian executed the indenture; Stultz did not.

Stultz subsequently ran away and was harbored by his mother. A writ of habeas corpus upon the relation of Brown issued from the C. P. directed to his mother, and upon the hearing, the above facts were undisputed.

Brock, *Prichard*, *Hoffman*, } For the Relator. — *Swartz*, *Beitler*, *Miller*, } For the Defendant.

Commonwealth *v.* Jones, 3 S. & R. 158; Commonwealth *v.* Moore, 1 Ash. 123.

Before Vice-Provost Junkin.

May 17, 1876.

Haines v. *Parsons.* } Supreme Court. Error to Common Pleas Schuylkill County.

Assumpsit. Plea, the general issue.

Haines, the defendant below, and Thompson were joint owners of a coal mine. Haines wrote to Evans asking him to find a lessee for the mine. Evans, finding that Parsons, an operator, was anxious for the mine, obtained an offer from him to lease, for ten years, at a certain rent, and sent it to Haines, who replied by letter to Evans, "I accept Parsons' offer."

When the matter was submitted to Thompson he refused to join in the lease, and consequently, though Haines remained willing, the lease was never executed. Parsons at the time he made his offer was aware of the joint ownership of Thompson and Haines, and also that the mine was not held as partnership property.

Parsons gave in evidence that he could have made $1000 per annum, if the lease had been consummated.

The defendant requested the Judge to charge as follows:—

That if the defendant is liable at all, it is only for actual expenses incurred by plaintiff by reason of the letter of acceptance. Negatived, and the Judge charged the jury "that if they believed the plaintiff could have made $1000 per annum out of the mine, they should give him a verdict for $10,000."

Verdict for plaintiff. Judgment thereon.

Defendant assigns for error the negativing of his point and the clause of the charge as above.

Love, *Paul*, *Dale*,	For Pl'ff in Error.	*Fallon*, *Drayton*, *Boyle*,	For Defendant in Error.

Wolf *v.* Studebacker, 15 Sm. 459; Riesz's Appeal, 23 Sm. 485.

Before Vice-Provost Penrose.

May 24, 1876.

Stevens v. *Williams.*	Supreme Court of the United States. Error to Supreme Court of Pa.

Stevens, a citizen of New York, brought an action of assumpsit against Williams, a citizen of Pennsylvania, in the Common Pleas of Philadelphia County.

Williams, in accordance with the Act of 10 April, 1869, § 1 (P. L. 23), presented to the Court an affidavit setting out that "he had a good defence, specifying the same, that it is not for the purpose of delay, and that the material witnesses of both parties reside in New York City." Whereupon the Common Pleas ordered a discontinuance of the suit, upon the defendant's giving the warrants of attorney required in the above-mentioned Act.

The warrants being given, the suit was discontinued.

The plaintiff took a writ of error, assigning for a reason

that the Act was unconstitutional, as in violation of the Constitution U. S. IV., 2, 1.

The Supreme Court of Pennsylvania affirmed the judgment of the Common Pleas, whereupon the plaintiff carries the case to the Supreme Court of the United States.

Townsend, *Guilbert*, *J. B. Taylor*,	For Plaintiff in Error.	*Washington*, *Wilkinson*, *Wetherill*,	For Defendant in Error.

Corfield *v.* Coryell, 4 W. C. C., 380; Ward *v.* Maryland, 12 Wall. 418.

Before Vice-Provost Mitchell.

May 31, 1876.

Thos. Little, Trustee,
v.
James Brown.

Common Pleas.

Ejectment.

Motion for Judgment on point reserved.

Lands were conveyed to Mary Jones, a *feme sole*, in trust, to sell and convey at her discretion, and reinvest the proceeds for certain purposes.

She made a parol contract of sale of the trust estate to James Brown (defendant). She then married John Smith, and after her marriage she executed and delivered to Brown a deed for the property in her own name, Mary Smith, trustee, without any liability on the part of the purchaser to see to the application of the purchase money; but her husband did not join in the deed, nor was it separately acknowledged by her. The defendant then paid her the whole purchase money agreed on, and took her sole receipt as Trustee at the foot of his deed. She never invested the purchase money as directed; but she was discharged from the trust, and the plaintiff, appointed trustee in her place, now brings this action to recover possession of the land. It was admitted that both John Smith and his wife, the late trustee, are hopelessly insolvent, and had applied the money to their own support.

The Court reserved the point whether the deed of Mary Smith, trustee, conveyed a valid title to the defendant.

The plaintiff now moves for judgment on the point reserved.

Mayer, *Neilson*, *Carson*, } For Motion. — *Uhle*, *Williams*, *Scollay*, } Contra.

Silverthorn *v.* McKinster, 2 Jones, 67 ; Hill on Trustees, *67, *304, *485.

Before the Provost.

June 7, 1876.

Henry v. *Richards.* } Supreme Court. Error to Common Pleas.

Assumpsit for stone sold and delivered.

At the trial the plaintiff proved the delivery, during the summer of 1872, of 2000 perches of stone, at $2 per perch, to a large building which defendant had contracted to erect. He admitted a credit of a note of the defendant for $1000, received 21 March, 1872, and at sundry times $2000 in cash ; he claimed the balance of $1000, and rested. (1.) The defendant offered a receipt signed by the plaintiff, for the said note, concluding with the words: "On account of 4000 perches to be delivered by Oct. 1, 1872." Plaintiff objected, on the ground that the receipt did not contain the whole contract of the parties. Objection overruled. (2.) Defendant then testified (under objection) to a set-off of $1000 (being the additional price over the contract price) for 1000 perches of stone at $3 per perch, which stone he was compelled to buy in open market, to carry on his work previous to October 1, 1872, while the plaintiff was furnishing. Defendant rested. (3.) Plaintiff in rebuttal offered to prove that the note of $1000 was obtained as an advance before the season opened,

on stone to be furnished; that defendant laid down with the note the receipt already in evidence; that plaintiff objected to agreeing for a fixed number of perches; that he did not know whether he could furnish so many; that he could not and would not furnish as many as 4000 perches, unless a new quarry he was opening should turn out well; that the defendant was silent; that plaintiff, after waiting a minute, signed the receipt, and took the note. Objected to and rejected. (4.) Plaintiff offered to prove as in (3), with the addition that the stone in the new quarry turned out to be inferior in quality, and that there were unexpected difficulties in working it. Objected to and rejected. (5.) Plaintiff offered to prove that in November, 1872, he called on the defendant to collect the balance, and that defendant put him off, saying he was short of money, and said nothing about a breach of contract, and that he first learned that defence after suit brought. Objected to and rejected. (6.) Plaintiff offered to swear that he never supposed under that receipt that he could hold defendant liable had he refused to receive the full number of perches. Objected to and rejected. No objection to the charge of the Court on the evidence before the jury. Verdict for defendant. Court seals bills of exceptions by the plaintiff to the admission of defendant's evidence (1) and (2), and the rejection of plaintiff's evidence (3), (4), (5), and (6), and these are assigned here by the plaintiff for error.

Gross, *Fenton*, *Stein*,	For Plaintiff in Error.	*Page*, *C. B. Taylor*, *Monaghan*,	For Defendant in Error.

Dutton *v.* Tilden, 1 H. 46; McClenken *v.* McMillen, 6 Barr, 366; 1 Greenleaf on Evidence, § 305; Coal Co. *v.* McShane, 31 Leg. Int. 236.